

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WASHINGTON

COMMUNITY ASSOCIATION FOR
THE RESTORATION OF THE
ENVIRONMENT, a Washington
nonprofit corporation, FRIENDS OF
TOPPENISH CREEK, a Washington
nonprofit corporation, and CENTER
FOR FOOD SAFETY, a Washington,
DC nonprofit corporation,

Plaintiffs,

v.

VIEW POINT DAIRY, a sole
proprietorship,

Defendant.

Case No. 1:22-CV-3143-TOR

CONSENT DECREE

WHEREAS, Plaintiffs Community Association for Restoration of the
Environment, Inc. (“CARE”), Friends of Toppenish Creek, and Center for Food
Safety (together, the “Plaintiffs”), filed a Complaint contemporaneously with this
Consent Decree against View Point Dairy, (collectively “Defendant”) (the
“Parties” collectively or a “Party” in the singular), alleging violations of the

1 Resource Conservation and Recovery Act, 42 U.S.C. § 6901, et seq. (“RCRA”),
2 and seeking declaratory and injunctive relief, civil penalties and attorneys’ fees and
3 costs; and

4 **WHEREAS**, Plaintiffs’ claims and this Consent Decree relate to the dairy
5 operations and facilities that are the subject of the Complaint and 90-Day Notice of
6 Intent (“90-Day Notice”) filed in this action; and

7 **WHEREAS**, Defendant denies Plaintiffs’ claims, allegations, and any
8 liability for each and every alleged violation; and

9 **WHEREAS**, Plaintiffs and Defendant agree that settlement of these matters
10 is in the best interest of the Parties and the public, and that entry of this Consent
11 Decree without additional litigation is the most appropriate means of resolving this
12 action; and

13 **WHEREAS**, Plaintiffs and Defendant, after consultation with their
14 respective counsel and without trial or final adjudication of the issues of fact or law
15 with respect to Plaintiffs’ claims or allegations, agree to the entry of this Consent
16 Decree to avoid the risks of litigation and to resolve all existing controversies
17 between them;

18 **NOW, THEREFORE**, without trial of any issue of fact or law, and without
19 admission by Defendant of any of the facts or violations alleged in the Complaint
20 or the 90-Day Notice, and upon consent of the Parties, and upon consideration of

the mutual promises herein contained, it is hereby **ORDERED, ADJUDGED**
AND DECREED as follows:

Section 1: General Provisions

1. This Court has jurisdiction over the Parties and subject matter of this
action pursuant to 42 U.S.C. § 6972 and 28 U.S.C. § 1331.

2. Venue is proper in this Court pursuant to 42 U.S.C. § 6972(a), and 28
U.S.C. §§ 1391(b) and 1395(a).

3. The undersigned representative for each Party certifies that he/she is fully
authorized by the Party or Parties whom he/she represents to enter into the terms
and conditions of this Consent Decree and to legally bind the Party or Parties to it.

4. Located in the Sunnyside area of Eastern Washington, Defendant View
Point Dairy is located at or near 1400 Lewandowski Road, Sunnyside, WA 98944,
and includes Yakima County Parcel Numbers 231004-41002, 231009-21002,
231009-12001, 231009-11002, and 231009-11001. View Point Dairy meets the
federal and state law definitions of a large concentrated animal feeding operation.

5. For this Consent Decree, the following terms will have the corresponding
meaning:

- a. The term “Dairy” shall refer to (1) the operational and process
facilities, including manure storage lagoons and compost areas, as
shown in the map on the aerial photograph attached as Exhibit 1

1 hereto (hereafter the “Production Area” as defined in 40 CFR
2 122.23(b)(8)); and (2) the Application Fields.

3 b. The term “Application Fields” shall mean the manure application
4 fields owned, leased, or otherwise controlled by Defendant. The term
5 “Application Fields” does not include any field that is not set forth in
6 the Dairy Nutrient Management Plan (“DNMP”). As of the date of
7 this Consent Decree, the Application Fields consist of the fields
8 depicted in Exhibit 2.

9 c. The term “Dairy Operations” shall refer to the dairy-related
10 activities including raising, managing or milking dairy cows and
11 support stock; collecting, composting, and otherwise managing dairy
12 manures; and applying dairy manure to application fields, collectively,
13 individually, or in any combination, conducted by Defendant within
14 the Production Area and Application Fields.

15 d. The term “Production Area” shall mean the dairy operational and
16 process facilities, including the dairy manure storage lagoons as
17 defined in 40 CFR 122.23(b)(8) and compost areas, and as shown in
18 the map on the aerial photograph attached as Exhibit 1.

19 6. This Consent Decree shall apply to and be binding upon the Parties to this
20 action, and upon the successors and assigns of the Parties who conduct Dairy

1 Operations or other CAFO Operations. This provision is intended to require full
2 compliance with this Consent Decree so long as the Dairy is used by any affiliated
3 person or entity in the course of conducting Dairy or other CAFO Operations at the
4 Dairy; provided that nothing herein shall prevent Defendant from discontinuing
5 their Dairy Operations, in whole or in part, at the Dairy, or from transferring any or
6 all of the Dairy (including one or more of the Application Fields) to other entities
7 for Dairy Operations or for uses other than for Dairy Operations. Should any such
8 discontinuance of Dairy Operations occur on any or all of the Dairy, this Consent
9 Decree shall no longer apply to any such portion of the Dairy that is not being used
10 for Dairy or other CAFO Operations. Defendant, or any of its successors or
11 assigns, may sell or otherwise transfer interest in the Dairy (including but not
12 limited to one or more of the Application Fields, or any of the real property upon
13 which the Dairy is situated or where Dairy Operations are conducted, in whole or
14 in part), without Plaintiffs' consent and without approval of the Court; provided,
15 however, that Defendant must provide a copy of this Consent Decree to the new
16 owner or transferee and provide written notice to Plaintiffs of the sale or other
17 transfer of real interest no later than 30 days after closing. The terms of this
18 Consent Decree run with the property for any Dairy or other CAFO Operations
19 until satisfied.

20 7. Any paragraph or subparagraph heading or section title in this Consent

Decree is provided solely as a matter of convenience to the reader and shall not be construed to alter the meaning of any provision of this Consent Decree.

Section 2: Dairy Manure Storage Lagoons

8. Defendant shall complete by no later March 31, 2023, an Engineering Water Budget in order to document the sufficiency of on-site storage under Dairy operating conditions contemplated in this Consent Decree.

9. Defendant shall complete and submit to Plaintiffs by no later than March 1, 2023, the Final Dairy Lagoon Work Plan and Basis of Design Report. The lagoon lining design shall be, at a minimum, compliant with NRCS-approved designs for synthetically lined lagoons in effect as of the date of entry of this Consent Decree. Defendant will complete this plan under NRCS protocols; specifically, according to the July 2017 NRCS guidance titled Pond Sealing or Lining – Geomembrane or Geosynthetic Liner, attached hereto as Exhibit 3. Consistent with those standards, the design will use, at a minimum, a 60-mil HDPE liner, an under drain, a leak detection sump, a compacted soil under-liner with a permeability of 10^{-4} cm/sec or less and applicable gas venting. No additional liners or features are needed for a sufficient design, but Defendant may use a more robust design.

10. Defendant shall line Lagoons 1-3 as set forth in the Dairy Lagoon Work Plan and Basis of Design Report and Engineering Water Budget. The schedule for

1 lining Lagoons 1-3 is as follows:

2 a. Lagoon 3 – by no later than December 31, 2024.

3 b. Lagoon 2 – by no later than December 31, 2026. If Defendant
4 receives a fifty percent (50%) match for the lining of Lagoon 3,
5 Defendant shall line Lagoon 2 by no later than December 31, 2025.

6 c. Lagoon 1 – by no later than December 31, 2028, with the
7 understanding that Defendant will have received fifty percent (50%)
8 matching funds to complete this lining. Notwithstanding the
9 foregoing, if Defendant receives fifty percent (50%) matching funds
10 for the lining of either Lagoons 2 or 3, then this match requirement for
11 Lagoon 1 will not apply. If no matching funds are received to
12 complete the lining of Lagoons 1, 2 or 3, then the lining of Lagoon 1
13 is not required. If Lagoon 1 is not lined, then it may not be used for
14 manure storage after December 31, 2028.

15 11. According to Defendant, Lagoon 4 was installed in compliance with
16 NRCS standards using a geosynthetic clay liner (GCL) with a protective soil cover
17 layer, and a downgradient leak detection well was installed in coordination with
18 the South Yakima Conservation District. Defendant will monitor this well in
19 addition to the wells described in Exhibit 4 to verify that the Lagoon 4 liner is
20 performing as described. If the monitoring well data shows a confirmed nitrate

1 exceedance of the MCL (>10 ppm nitrate nitrogen), View Point will conduct an
2 evaluation of Lagoon 4 to confirm whether it is leaking. That evaluation will
3 include installation of two lysimeters beneath Lagoon 4 to test for potential
4 leakage. The evaluation shall be completed within twelve (12) months of the
5 confirmed MCL exceedance. If leakage is detected, the Parties shall first confer
6 about whether repair is practicable. If the Parties disagree about the practicability
7 of liner repair after conferral, then the matter shall be resolved through the dispute
8 resolution provision set forth in Paragraph 57 of this Consent Decree. If the Court
9 determines the repairs are not practicable, the liner will be replaced with a liner
10 consistent with those to be used for lagoons 1, 2 and 3 and contained in Exhibit 4,
11 or else the lagoon will be abandoned. Lining, repair, or abandonment of Lagoon 4
12 shall be completed within 12 months of completion of the Lagoon 4 evaluation or
13 December 31, 2028, whichever is later.

14 12. Defendant may abandon any lagoon that it chooses not to line. As used
15 in this Consent Decree, a lagoon is “abandoned” once manure has been removed,
16 nutrient-rich soils have been removed and the lagoon has been filled or otherwise
17 modified to prevent impounding of water or other liquids. If storage capacity is not
18 needed, engineer-stamped documents shall be provided to Plaintiffs indicating that
19 the facility has adequate storage capacity for Dairy Operations without the lagoon
20 proposed for abandonment. Such abandonment shall include the removal or

1 treatment of the abandoned lagoon bottom and side-wall soils containing greater
2 than 45 mg N/kg (measured as the sum of ammonia-N and nitrate-N), and
3 Defendant shall provide sampling data to Plaintiffs prior to final abandonment that
4 documents that the bottom and side-wall soils of any abandoned lagoons contain
5 less than 45 mg N/kg. If the sidewalls or bottom exceed 45 mg N/kg, then the
6 lagoon shall be excavated until the soils contain less than 45 mg N/kg. In the event
7 that Defendant chooses to abandon a lagoon in a particular calendar year, such
8 abandonment shall be treated as if Defendant met the annual lagoon-lining
9 requirement for that particular calendar year (but, for instance, Defendant may not
10 abandon one lagoon with a proposal to expand the capacity of a lagoon to be lined
11 later to handle capacity needs caused by the abandonment of that particular
12 lagoon).

13 13. Defendant may combine any lagoons to decrease overall storage or
14 construction costs. In the event that Defendant chooses to combine two lagoons in
15 a particular calendar year, such combination shall be treated as if Defendant lined
16 one lagoon for that calendar year and one lagoon for the next calendar year.

17 14. Plaintiffs shall be permitted to observe and inspect Defendant's activities
18 with respect to all lagoon lining projects pursuant to Section 10, paragraph 46
19 below.

20 15. Defendant shall provide Plaintiffs with an as-built report following the

1 lining or abandonment of each lagoon pursuant to this Section. Defendant shall
2 provide the as-built report to Plaintiffs no later than February 28th in the calendar
3 year following completion of such lining or abandonment of such lagoon. For
4 lagoons that are lined pursuant to this Consent Decree, the as-built report shall
5 include, at a minimum, the following information:

- 6 a. Survey of lagoon topography at the completion of soil work
7 (excavation, fill, grading and compaction) prior to liner installation;
- 8 b. Results of compaction test data including lagoon floor, slope, and
9 sump;
- 10 c. Final liner leak detection survey and results of any puddle surveys
11 prior to filling of lagoon;
- 12 d. As-built drawings with vent locations, sump details, sump shape
13 and volume, and utility locations;
- 14 e. Leak detection pump test data; and
- 15 f. Photo or video documentation of each lagoon at six project
16 milestones: beginning of construction; completion of earthwork;
17 placement of secondary liner; installation of sump and piping;
18 placement of primary liner; and project completion.

19 **Section 3: Groundwater Well Installation and Monitoring**

20 16. The Dairy shall install and routinely monitor three (3) new ground water

1 monitoring wells at locations to be selected by CARE, in the vicinity of the
2 locations set forth in Exhibit 4. CARE's representative will meet at the Dairy no
3 later than December 15, 2022, to determine the optimal well placement. The new
4 wells shall be installed in the first water table aquifer encountered. The existing
5 monitoring well (i.e., the well installed by Anchor QEA) shall also be monitored at
6 the same time for a total of four (4) monitoring locations. These four (4) wells shall
7 be sampled quarterly (no later than the last day of March, June, September and
8 December) for the first year and semi-annually (no later than the last day of June
9 and December) thereafter. Dedicated sampling pumps shall be installed in each
10 monitoring well. The required analyte list for the first year of quarterly sampling is
11 provided below.

12 i. Nitrate (as nitrogen) by EPA Method 300.0

13 ii. Nitrite (as nitrogen) by EPA Method 300.0

14 iii. Ammonia by EPA Method 350.1

15 iv. Total phosphorus by EPA Method 365.3

16 v. Total Kjeldahl nitrogen (TKN) by EPA Method 351.2

17 vi. Inorganic anions (chloride, fluoride, sulfate) by EPA Method
18 300.0

19 vii. Metals (calcium, potassium, magnesium, sodium) by EPA
20 Method 200.7

viii. Alkalinity (total and bicarbonate) by Standard Method
2320B.

17. After the first year, the wells shall be tested semi-annually (not later than the last day of June and December) for only nitrate so long as nitrite and ammonium have not been present for the four most recent tests. If nitrite or ammonium is present in any of the four most recent tests, then testing shall continue for the present parameter(s) until four (4) consecutive tests show no nitrite or ammonium present. Monitoring shall continue until the groundwater concentrations of nitrate are below its MCL (10 mg nitrate-N/L) and concentrations of nitrite are below its MCL (1.0 mg nitrite-N/L) for four (4) consecutive sampling events in all four (4) wells, at which point monitoring may cease.

18. Defendant shall install the new monitoring wells by no later than March 1, 2023, using continuous core drilling or roto-sonic techniques, depending on site conditions. Defendant shall complete the first four (4) quarterly sample events by no later than December 31, 2023.

Section 4: Stormwater Engineering

19. Defendant shall complete and submit to Plaintiffs a Stormwater Piping and Engineering Plan that identifies the locations of underground pipes and other stormwater conveyances in the Production area and used by Dairy Operations by

1 no later than April 30, 2023. The Stormwater Piping and Engineering Plan shall
2 identify any stormwater upgrades necessary to convey stormwater to the Dairy's
3 manure lagoons. Defendant shall complete stormwater upgrades described in the
4 Stormwater Piping and Engineering Plan by no later than December 31, 2023,
5 exclusive of those drainage upgrades otherwise listed in Section 7 below.

6 **Section 5: Cow Pen Maintenance**

7 20. Defendant shall complete the drainage improvements on the west side of
8 the western dairy cow pen by no later than December 31, 2023. These drainage
9 improvements are defined in Exhibit 5.

10 21. Defendant shall apply the maintenance standards identified in Exhibit 6
11 to the dairy cow pens currently in place at the Dairy or added to the Dairy
12 Operations in the future.

13 **Section 6: Silage Areas**

14 22. Defendant shall collect and route to the lagoon system all stormwater
15 and silage liquids collected from the silage area. Defendant shall complete the
16 necessary silage drainage improvements by no later than December 31, 2023. The
17 required improvements are defined in Exhibit 7.

18 **Section 7: Compost Areas**

19 23. Defendant shall implement drainage improvements in the existing
20 compost area consistent with Exhibit 8. The improvements include construction of

1 new lined drainage ditches and piping to convey leachate and stormwater to the
2 lagoon system.

3 24. Defendant shall complete construction to the drainage improvements
4 identified in Exhibit 8 by no later than December 31, 2025, to ensure all runoff in
5 the area is captured and directed to the lagoon system.

6 25. Lined ditches used as part of the work defined in Exhibit 8 will be lined
7 with 40 mil HDPE geomembrane. Asphalt or concrete lining or piped conveyances
8 may be used as alternates.

9 26. Defendant shall align compost windrows along a northeast-southwest
10 alignment as shown in Exhibit 8. Defendant shall conduct regrading and re-
11 compaction of the compost area as necessary to achieve a 2.0% minimum average¹
12 grade along the compost windrows toward the drainage ditches swales shown in
13 Exhibit 8. By no later than December 31, 2024, Defendant shall submit to
14 Plaintiffs a survey completed by a licensed surveyor documenting the grades
15 achieved. Survey transects shall be located no more than 50 feet apart.
16 Measurement of grade shall be performed at control points approximately every 50
17 feet along each transect. The grade of the compost area must average no less than

18
19 ¹ The average slope of the compost area, as used herein, shall be the mean value calculated
20 using the transect measurements taken at approximately every 50-feet as discussed in paragraph
26 of this Consent Decree.

1 2.0% along each transect, and the grade at each individual transect control point
2 must be no less than 1.0%. The grading tolerances of this paragraph recognize both
3 the limitations of earthen grading with existing on-site soils and the need to
4 provide positive drainage for leachate and stormwater during composting
5 operations. The slope requirements and measurement protocol provided for in this
6 Paragraph shall also apply to any future reconstruction, modification, repair,
7 relocation or expansion of the Dairy's compost area(s) throughout the term of the
8 Consent Decree.

9 27. By no later than June 30, 2023, Defendant shall perform soil proctor and
10 compaction testing throughout the compost areas used for Dairy Operations.
11 Compaction testing shall be performed on a grid (four (4) locations per acre).
12 Areas not meeting 95% compaction of standard proctor shall be re-compacted and
13 re-tested by no later than December 31, 2024. Where required, such recompaction
14 shall be performed in conjunction with any re-grading work required under
15 paragraph 26 and the drainage improvements required under paragraph 24.

16 28. View Point shall conduct routine maintenance at least quarterly to
17 minimize minor depressions with negative grades capable of forming ponds or
18 puddles greater than ten feet in diameter.

19 29. Paragraphs 23 through 28 comprise each and every obligation necessary
20 to comply with Section 7 of this agreement and no other obligations are required.

Section 8: Manure Application and Field Management

30. The provisions of this Section shall apply only to Application Fields owned, leased, or otherwise controlled by Defendant and used for application of dairy manure, including any Application Fields Defendant owns, leases, or otherwise controls after the Effective Date and during the term of this Decree. All such Application Fields owned, leased, or otherwise controlled by Defendant shall be addressed in Defendant's DNMP.

31. With respect to nitrogen, Defendant shall adhere to the following beginning in the Fall of 2022 for all Dairy manure applications:

a. Defendant shall make nitrogen applications at or below the agronomic rates based on Application Field-specific nutrient management budgets prepared by an agronomist.

b. Defendant shall restrict their manure application in the manner described in the following Table:

Table 1. Manure Application Restrictions for Nitrogen Control

Fall Average Residual N in Upper 2 feet	Nitrogen Application Restrictions Based on Measured Fall Average Residual Soil Nitrogen Levels (NH ₄ -N+NO ₃ -N)
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(NH ₄ -N+NO ₃ -N)	Crop Year 2023 (Fall 2022)	Crop Year 2024 (Fall 2023)	Crop Year 2025 (Fall 2024)	Crop Year 2026+ (Fall 2025)
≤ 15 mg N/kg	100% of agronomic rate	100% of agronomic rate	100% of agronomic rate	100% of agronomic rate
15.1-25 mg N/kg	100% of agronomic rate	100% of agronomic rate	95% of crop extraction rate	90% of crop extraction rate
25.1-35 mg N/kg	95% of crop extraction rate	85% of crop extraction rate	80% of crop extraction rate	75% of crop extraction rate
35.1-45 mg N/kg	90% of crop extraction rate	80% of crop extraction rate	70% of crop extraction rate	60% of crop extraction rate
> 45 mg N/kg	No application	No application	No application	No application

c. For purposes of interpreting Table 1:

i. Nitrogen agronomic rate limitation shall apply to both the winter and summer crop, based on Fall post-harvest and Spring pre-plant sampling, unless follow-up soil nitrogen measurements fall into a lower category

1 and crop tissue (basal stem and leaf sampling) measurements show a deficiency in
2 the crop tissue for nitrogen.

3 ii. If a given Application Field exceeds 25 mg N/kg for
4 three (3) years in a row after crop year 2026, then Defendant shall reduce the
5 application limit for that field from 75% to 50% until the nitrogen level drops
6 below 15 mg N/kg.

7 iii. If a given Application Field exceeds 35 mg N/kg for
8 two (2) years in a row after crop year 2026, then Defendant shall apply no manure
9 to that field until the nitrogen level drops below 15 mg N/kg.

10 d. Nitrogen levels used to determine compliance with Table 1
11 shall be measured by the average of nitrate-nitrogen plus ammonium-nitrogen in
12 each of the top two feet of the soil column based on Fall post-harvest sampling
13 results.

14 32. Defendant shall endeavor to achieve a 40-ppm phosphorus long-term
15 goal in the top foot of soil of the Application fields; however, the Parties agree that
16 Defendant's phosphorus goal set forth in this paragraph is not enforceable, whether
17 at law or in equity, and failure to achieve that goal, or to endeavor to do so, shall
18 not be a basis for (i) sanctions, (ii) nontermination of this Consent Decree, or (iii)
19 modification of this Consent Decree.

20 33. Defendant shall implement a soil moisture monitoring program at the

1 Dairy Application Fields in accordance with the following requirements:

2 a. For purposes of this paragraph, a “Soil Moisture Monitoring
3 Period” begins two weeks prior to Defendant’s first irrigation or dairy
4 manure application event in each Application Field through at least
5 two weeks after Defendant’s final irrigation or manure application
6 event in each field. During most years, the Soil Moisture Monitoring
7 Period will extend from mid-March through early November.

8 b. During the Soil Moisture Monitoring Periods in 2023, 2024 and
9 2025, Defendant shall install and operate up to 4 irrigation sensor
10 stations in the Dairies’ application fields. For Application Fields that
11 contain soils with significantly different nitrate leaching potential or
12 water holding capacity, as indicated by the Natural Resources
13 Conservation Service (“NRCS”) Web Soil Survey, Defendant will
14 include soil moisture sensors in each of two representative soil series.
15 Defendants shall provide by December 31, 2022, maps showing the
16 locations of the proposed soil moisture sensors and the areas of soil
17 type and nitrate leaching potential.

18 34. Defendant shall install sensors in each location at the following three
19 approximate depths (variable by +/- two inches): 0.5-foot, 1.5-feet and 2.5-feet. If
20 rocky or indurated soil properties in any location preclude effective placement of

1 the 2.5-foot sensor after three independent boring attempts, Defendant shall not be
2 required to install the 2.5-foot sensor in that location(s), but shall document for
3 each of those location(s) the total depth of soil to the point of boring refusal.

4 35. To verify field capacity estimates, Defendant shall calibrate sensors at
5 the time of installation using a gravimetric sample approach where soil water is
6 measured on a weight basis. Soil bulk density measurements used in calibration
7 shall be confirmed for each sensor location at each depth. Calibration shall be
8 reported to Plaintiffs.

9 36. Defendant shall calibrate any replacement sensors in a similar manner as
10 in Paragraph 33, and these calibrations shall be reported to Plaintiffs.

11 37. Defendant shall inspect sensors monthly to maintain the sensors in an
12 operational condition throughout the Soil Moisture Monitoring Period. Defendant
13 shall implement necessary maintenance, repairs or replacement of the sensors with
14 the goal of avoiding operational down-times. Operational down-times are expected
15 to remain less than 30 days within an irrigation season, with the exception of force
16 majeure events.

17 38. Defendant shall use the soil moisture sensors to validate and, if
18 necessary, adjust its irrigation rates to meet crop needs while minimizing
19 exceedances of Application Field capacity in the 2.5-feet soil level.

20 39. Beginning on the Effective Date, Defendant shall for the duration of this

1 Decree maintain application records of (a) any dairy manure it hauls to and applies
2 to an Application Field; and (b) any dairy manure it applies to Application Fields
3 through irrigation or blending. Such records shall include the Application Field ID;
4 the manure quantity (volume); characteristics (blended or straight); date of
5 application; and a link to the manure nutrient testing information. Defendant shall
6 keep separate application records in the event that an application takes place over
7 multiple days, or if multiple applications are conducted to the same field on
8 different days.

9 40. No later than January 31 of each year beginning in 2023 and for each
10 year for the duration of the Consent Decree, Defendant shall provide to Plaintiffs
11 PDF copies of dairy manure management records for the prior crop year via
12 electronic mail (at the addresses listed in Paragraph 62). Records that Defendant
13 shall provide pursuant to this paragraph are listed in Exhibit 9.

14 41. Any dairy manure management records routinely generated by
15 Defendant in compliance with their CAFO permit and similar regulatory
16 requirements shall be kept on-site at the Dairy for five (5) years from the date of
17 generation. No more than twice per calendar year, Plaintiffs shall have the right to
18 request access to conduct an on-site review of the manure management records for
19 which they have not been provided copies pursuant to Paragraph 39.

20 42. Defendant shall use flow meters on all Dairy Application Fields to which

1 it applies lagoon water through irrigation or blending.

2 **Section 9: Clean Drinking Water Project Funding**

3 43. The Dairy is not under any obligation to contribute any money to the
4 Clean Drinking Water Project unless samples from at least one of the on-site
5 monitoring wells tests above 10 ppm N as nitrate or 1.0 ppm N as nitrite for more
6 than two consecutive monitoring events. If one or more of the on-site monitoring
7 wells test above 10 ppm N as nitrate or 1.0 ppm N as nitrite for more than two
8 consecutive events, then the Dairy shall pay to the Clean Drinking Water Project
9 \$1,000 per month until all four on-site monitoring wells drop below 10 ppm N as
10 nitrate and 1.0 N as nitrite for four consecutive monitoring events, at which time
11 the Dairy's obligation to pay \$1,000.00 per month will terminate. When applicable,
12 Clean Drinking Water Project payments may be made in a single annual payment
13 due prior to December 31st of the applicable calendar year. The "monitoring
14 wells" to which this Section refers to are the four wells described in Paragraph 16.

15 44. The Clean Drinking Water Project, already in place, shall be expanded to
16 provide alternative clean drinking water to residents in the area. All aspects of the
17 program shall be managed by the Clean Drinking Water Project; View Point's only
18 obligation is to provide the agreed upon funding set forth in Paragraph 43 above.

19 **Section 10: Site Inspections**

20 45. Pursuant to the above Sections 2 through 9 (Manure Storage Lagoons,

1 Groundwater Well Installation and Monitoring, Stormwater, Piping, and
2 Engineering Plan, Silage Area, Compost Area, Manure Application and
3 Management), and relating to Plaintiffs' observation and/or inspection of activities
4 at the Dairy, the following provisions shall apply:

5 a. For each activity Plaintiffs are permitted to observe and/or inspect,
6 Plaintiffs may have up to three representatives present at the Dairy
7 during such observation or inspection.

8 b. Plaintiffs' representatives are permitted upon the Dairy solely to
9 observe and inspect the activities provided.

10 c. Plaintiffs' representatives shall have applicable scientific or
11 professional qualifications to be able to confirm compliance with this
12 Consent Decree.

13 d. At least twenty-one (21) days prior to any such observation and
14 inspection, Plaintiffs shall provide Defendant written notice of their
15 intent to observe and inspect the Dairy, identifying the Section of this
16 Decree related to the inspection, what physical area of the Dairy they
17 intend to inspect, any alleged or anticipated problems subject to
18 inspection, and who shall attend. Such notice shall include the names
19 of the proposed observers/inspectors, a description of their
20 qualifications (if not otherwise known to Defendant), and the start and

1 end times of the proposed period of observation/inspection (which
2 shall not be before 8:00 AM or after 5:00 PM).

3 e. The representatives may not remain on the Dairy outside of
4 business hours unless otherwise agreed and must be accompanied by a
5 representative of Defendant at all times.

6 **Section 11: Fees and Costs**

7 46. Plaintiffs claim the right to recover reasonable attorneys and expert
8 witness fees under RCRA.

9 47. After determining the hours expended in preparation and prosecution of
10 this litigation and the anticipated costs of the oversight of implementation of this
11 Consent Decree, Defendant and Plaintiffs agree that the sum of \$46,000.00, will be
12 paid to the Law Offices of Charles M. Tebbutt, P.C., 941 Lawrence St., Eugene
13 OR 97401, Attention: Charles M. Tebbutt, within thirty (30) days of entry of this
14 Consent Decree in full and complete satisfaction of an award of such costs and fees
15 incurred through the date of entry of the Consent Decree.

16 48. Defendant shall reimburse Plaintiffs for costs documented by Plaintiffs
17 that are necessary to monitor implementation of this Decree (“Monitoring Costs”)
18 up to the following maximum amounts, subject to the terms in Paragraphs 49-51
19 below:

20 2023: \$10,000

1 2024: \$15,000

2 For each year thereafter until Consent Decree termination: \$5,000.

3 The parties intend the foregoing maximum thresholds to include Plaintiffs' costs,
4 expert fees, and attorneys' fees.

5 49. The Parties shall use best efforts to minimize Plaintiffs' Monitoring
6 Costs. For instance, the Parties shall maintain open communication with each other
7 in order to minimize the Monitoring Costs; Defendant shall provide required
8 documentation in electronic format in a timely manner to Plaintiffs; and Plaintiffs
9 shall attempt to bundle activities and associated site visits where possible. Yearly
10 monitoring fees are intended to cover costs of oversight of Consent Decree
11 implementation and assume compliance. Should compliance not be achieved,
12 Plaintiffs reserve the right to seek additional fees and costs which may be awarded
13 by this Court only under applicable law and procedure.

14 50. No later than February 15 of each year from 2024 through and including
15 2030, Plaintiffs shall submit a single package of invoices to Defendant that
16 document Plaintiffs' Monitoring Costs for the prior year. The invoices shall
17 provide a brief narrative describing the work Plaintiffs performed and an
18 itemization of associated Monitoring Costs. Defendant shall have thirty (30)
19 calendar days to review invoices and identify any disputed Monitoring Costs for
20 discussion with Plaintiffs. Undisputed Monitoring Costs shall be paid within 60

1 calendar days of Defendant's receipt of the invoice(s) reflecting the undisputed
2 Monitoring Costs. Disputed Monitoring Costs shall be subject to the Dispute
3 Resolution provisions of Paragraph 56.

4 **Section 12: Other Terms and Conditions**

5 51. This Consent Decree is intended to be and shall constitute the exclusive
6 remedy and final resolution between Plaintiffs, including their officers and
7 directors, and Defendant for all alleged violations of RCRA and all issues as set
8 forth in the Complaint and/or 90-Day Notice filed in this case that may have
9 occurred or that could have been raised prior to the entry of this Consent Decree.

10 52. Each Party acknowledges and represents that they have relied on the
11 legal advice of their attorney, who is the attorney of their own choice and that the
12 terms of this Consent Decree have been completely read and explained to them by
13 their attorney, and that the terms are fully understood and voluntarily accepted.
14 Plaintiffs have been represented by Charles M. Tebbutt of the Law Offices of
15 Charles M. Tebbutt, P.C. Defendant has been represented by Kent D. Krabill, of
16 counsel to Lynn Pinker Hurst Schwegmann LLP.

17 53. If for any reason the Court should decline to approve this Consent
18 Decree in the form presented, the Parties agree to continue negotiations in good
19 faith in an attempt to cure any objection raised by the Court to entry of this
20 Consent Decree.

1 54. Defendant need not file an answer to the complaint in this action unless
2 or until the Court expressly declines to enter this Consent Decree.

3 **Section 13: Integration**

4 55. This Consent Decree constitutes the final, complete, and exclusive
5 agreement and understanding of the Parties with respect to the settlement
6 embodied in this Consent Decree and the subject matter of this action. The Parties
7 acknowledge that there are no representations or understandings relating to this
8 action and settlement other than those expressly contained in this Consent Decree.

9 **Section 14: Modification**

10 56. This Consent Decree may not be modified by the Parties except by
11 written amendment signed by the Parties and shall be effective upon approval by
12 the Court. If the Parties agree in writing that the modification is minor, the Parties
13 may agree to the written modification without approval by the Court. However, no
14 such minor modification will be binding, unless the parties each expressly and
15 affirmatively agrees to the following language:

16
17 **“WE AGREE THAT THIS WRITING MODIFIES THE COURT’S**
18 **CONSENT DECREE AND AGREE TO THIS MODIFICATION**
19 **IN SUBSTANCE AND FORM”**
20

1 Such minor modification must then be filed in the Court's docket before it
2 becomes operative. The Court reserves the right and power to reject or modify any
3 such minor modification.

4 Any modification that lacks either the foregoing statement or Court approval
5 shall not be binding in any way on any party.

6 **Section 15: Retention of Jurisdiction and Dispute Resolution**

7 57. The Court shall retain jurisdiction over this matter for the purpose of
8 interpreting and enforcing the terms of the Consent Decree. In the event of any
9 dispute regarding implementation of or compliance with the Consent Decree, the
10 Parties shall first attempt to informally resolve the dispute through meetings
11 between the Parties. Any Party may initiate informal dispute resolution by serving
12 Notice of a request for dispute resolution pursuant to this Paragraph. If no
13 resolution is reached within thirty (30) days from the date that the notice of dispute
14 is served, the Parties may resolve the dispute by filing motions with the Court.

15 **Section 16: Termination**

16 58. The Consent Decree shall terminate when:

17 (i) the construction work in Sections 2, 4, 6, and 7 and the drainage
18 improvements in Exhibit 5, Exhibit 7 and Exhibit 8 are complete;

19 (ii) the wells described in Section 3 are installed; and

20 (iii) the field management criteria in Section 8 have been fully satisfied and

1 incorporated into the Dairy's DNMP.

2
3 Irrespective of such termination, the monitoring obligations of Section 3 shall
4 continue until terminated as described in Section 3. Sections 9 and 11 shall
5 terminate by their own terms.

6 59. Notwithstanding anything herein to the contrary, each Section of this
7 Consent Decree and each obligation imposed thereby shall terminate as described
8 in Paragraph 58 of this Consent Decree, and once all criteria described in
9 Paragraph 58 have been satisfied the parties agree to file a Notice of Termination
10 and a proposed order within 14 days of satisfaction of all criteria terminating the
11 Consent Decree and this litigation.

12 **Section 17: Released Claims**

13 60. This Consent Decree is intended to be and shall constitute the exclusive
14 remedy and final resolution between Plaintiffs and their officers and directors, and
15 Defendant for all alleged violations of federal law and all issues as set forth in the
16 Complaint and/or 90-Day Notice filed in this case that may have occurred or that
17 could have been raised prior to the entry of this Decree, whether known or
18 unknown, asserted or unasserted, accrued or unaccrued.

19 61. This Decree constitutes a full, final, and complete settlement of all
20 claims, rights, demands, and causes of action for alleged violations of federal law

1 that Plaintiffs asserted, or could have asserted in the Complaint and the 90-Day
2 Notice filed in this case, whether known or unknown.

3 62. Neither Plaintiffs, including any person(s) or entity acting with, by or
4 through Plaintiffs, in either their own or in any representative capacity, nor any of
5 Plaintiffs' shareholders, officers or directors, shall file or cause to be filed or
6 intervene in any enforcement lawsuit in any court with respect to matters arising
7 from the allegations set forth in the 90-Day Notice and Complaint in this matter.

8 **Section 18: Notice**

9 63. Whenever notice is required to be given or a document is required to be
10 sent by one Party to another under the terms of this Consent Decree, it will be
11 directed to the individuals at the addresses specified below, unless prior notice of a
12 change has been given to the other Party. Notice shall be deemed sufficient under
13 this Consent Decree if it is provided in writing through the U.S. mail/Federal
14 Express/UPS, hand delivered, or provided electronically by e-mail. In the event
15 that notice is provided by U.S. mail/ Federal Express/UPS, it shall be considered
16 effective upon receipt. This paragraph shall also apply to any payments made
17 under this Consent Decree, unless otherwise provided under this Consent Decree.

18 //

19 //

20 //

As to Plaintiffs:

Charles M. Tebbutt, Esq.
B. Parker Jones, Esq.
Law Offices of Charles M. Tebbutt, P.C.
941 Lawrence Street
Eugene, OR 97401
charlie@tebbuttlaw.com
parker@tebbuttlaw.com

As to Defendant:

Kent D. Krabill, pro hac vice pending
Texas Bar No. 24060115
Joshua D. Lang, pro hac vice pending
Texas Bar No. 24060115
Lynn Pinker Hurst & Schwegmann LLP
2100 Ross Avenue, Suite 2700
Dallas, Texas 75201
Tel: 214-292-3600
Fax: (214) 981-3839

Section 19: Effective Date and Final Judgment

64. This Consent Decree shall constitute a final non-appealable judgment in this action and shall take effect on the day it is entered by the Court. The Court shall retain jurisdiction to enforce the terms of this Consent Decree and to resolve any disputes arising hereunder until the Consent Decree has been terminated in accordance with Section 16 of this Consent Decree.

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1 **IT IS SO ORDERED THIS 3rd DAY OF NOVEMBER 2022.** All
2 Exhibits appearing at ECF No. 6-1 **are hereby incorporated** by reference into this
3 Consent Decree.

4 The Clerk of Court shall enter Judgment accordingly, provide copies to the
5 parties, and administratively close the file.

6 Dated November 3, 2022.



9

A handwritten signature in blue ink that reads "Thomas O. Rice".

THOMAS O. RICE
United States District Judge

10 WE HEREBY CONSENT to the Entry of this Consent Decree:

11 **Community Association for Restoration of the Environment, Inc.**

12 By: Signature on file at ECF No. 6-1.

13 **Friends of Toppenish Creek**

14 By: Signature on file at ECF No. 6-1.

15 **Center for Food Safety**

16 By: Signature on file at ECF No. 6-1.

17 *Plaintiffs*

18 **VIEW POINT DAIRY**

19 By: Signature on file at ECF No. 6-1.

20 *Defendant*